Office - Supreme Court, U.S.
FILED
MAY 18 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-1498

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

BLACK CITIZENS FOR A FAIR MEDIA, *et al.*,
Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF IN OPPOSITION FOR RESPONDENTS AMERICAN BROADCASTING COMPANIES, INC., CBS INC., NATIONAL ASSOCIATION OF BROADCASTERS, NATIONAL RADIO BROADCASTERS ASSOCIATION

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May 18, 1984

QUESTION PRESENTED FOR REVIEW

Whether the Federal Communications Commission violated the Communications Act of 1934, or otherwise acted arbitrarily and capriciously, in deleting from its broadcast license renewal application forms questions designed to elicit certain program information, in light of the Commission's finding that: it does not need that information from each applicant (1) to decide whether renewal of the applicant's broadcast license will serve the public interest, convenience and necessity; or (2) to monitor broadcasters' compliance with the Commission's substantive rules and regulations?

REPRESENTATION REQUIRED BY RULE 28.1 OF THE RULES OF THE UNITED STATES SUPREME COURT

In light of the purposes of Rule 28.1, counsel construe the terms "parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates" to mean those corporations (1) whose shares are publicly traded; (2) in the case of "parent companies," which own a majority of the shares of a party; and (3) in the case of "subsidiaries and affiliates," a majority of whose shares are owned by a party.

American Broadcasting Companies, Inc.; CBS Inc.; National Association of Broadcasters; and National Radio Broadcasters Association have no parent companies, subsidiaries or affiliates so defined.

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BRIEF IN OPPOSITION FOR RESPONDENTS AMERICAN BROADCASTING COMPANIES, INC., CBS INC., NATIONAL ASSOCIATION OF BROADCASTERS, NATIONAL RADIO BROADCASTERS ASSOCIATION

STATEMENT OF THE CASE

The petitioners seek certiorari from a decision of the United States Court of Appeals for the District of Columbia Circuit[1] upholding the authority of the Federal Communications Commission ("the Commission") to reassess its broadcast renewal application forms and to eliminate questions that did not produce information it needed. As the court of appeals recognized below, and as petitioners concede, this case involves no substantive change in the programming guidelines applicable to broadcasters or in the responsibility of broadcasters to

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[1] *Black Citizens for a Fair Media v. FCC*, 719 F.2d 407 (D.C. Cir. 1983).

operate in the public interest. The changes of which petitioners complain concern solely the Commission's determination of what information it needs at license renewal time and how best to ensure licensee compliance with its substantive policies.

After a notice-and-comment rulemaking proceeding, the Commission on March 26, 1981, unanimously adopted the simplified renewal application form for television and radio licensees challenged here.[2] The Commission's renewal process now rests on five elements:

> (1) a simplified renewal application ("SRA") providing information regarding, *inter alia*, the applicant's legal and character qualifications;[3]
>
> (2) a longer application form requiring substantial programming information, much like previous renewal forms,[4] which a randomly selected group con-

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[2] *Radio Broadcast Services: Revision of Applications for Renewal of License of Commercial and Noncommercial AM, FM, and Television Licensees*, 49 Rad. Reg. 2d (P&F) 740 (May 11, 1981) (hereinafter cited as *"Report and Order"*), *reconsideration denied*, 87 F.C.C.2d 1127 (1981) (hereinafter cited as *"Reconsideration Order"*).

[3] All licensees must certify in the SRA that they are in compliance with the alien ownership restrictions of the Communications Act; that the ownership reports required by the Commission are on file with the agency; and that they have placed in files available for public inspection the material described in note 6, *infra*. *Report and Order*, 49 Rad. Reg. 2d (P&F) at 744-45 ¶ 16.

All stations must also separately file with the Commission model programs demonstrating compliance with the Commission's equal employment opportunity rules and policies. *Id.* at 753, ¶ 47.

[4] The audit form requires the selected television stations to file, for example, information on their efforts to ascertain community needs, data with respect to the amounts of news and public affairs programming they have broadcast, descriptions of their programming for children, and information about their public service announcements. *Id.* at 743, ¶ 13.

The Commission decided not to subject commercial radio stations to the long form audit because, in a separate proceeding, it had eliminated for commercial radio many of the programming require-

sisting of at least five percent of television and noncommercial radio stations must file instead of the SRA;[5]

(3) a requirement that television and radio licensees maintain a file of detailed programming and other information, which the Commission and members of the public are free to inspect and which members of the public may use to evaluate and bring to the Commission's attention questions about each station's programming and operations;[6]

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ments and related documentation covered in the long form. *See infra* notes 6, 46.

[5] As the court of appeals noted, the Commission has in fact required ten percent of eligible licensees to fill out the long form audit since the new process has been placed into effect. *Black Citizens for a Fair Media v. FCC*, 719 F.2d at 410 (citing Commission brief).

[6] Commercial television stations must place in their public files, *inter alia*, annual listings of problems and needs facing the community and illustrative programming in response thereto; current promises concerning the amounts of news, public affairs, and other non-entertainment programming they will present; program logs for a composite week; and an equal employment opportunity program as well as statistical employment reports. 47 C.F.R. § 73.3526 (1983); *Report and Order*, 49 Rad Reg. 2d (P&F) at 745, ¶ 16.

Pursuant to the Commission's separate radio deregulation proceeding, commercial radio stations must maintain in their files some of the same information required of commercial television stations. Although they need not maintain composite week program logs, ascertainment survey materials, or programming promises, they must place in their public files, on a quarterly rather than annual basis, lists of programming responsive to community problems, issues, and needs. They must also provide the equal employment opportunity data described above. *See Deregulation of Radio*, 84 F.C.C.2d 968, *reconsideration denied*, 87 F.C.C.2d 797 (1981), *aff'd in part, remanded in part, Office of Communication of United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983), *on remand*, BC Docket No. 79-219, slip op. at 11, ¶ 29 (Apr. 27, 1984).

Currently pending before the Commission is a proceeding concerning possible reduction of the agency's television regulation along the lines of the radio deregulation proceeding. *Revision of Programming and Commercialization Policies, Ascertainment Require-*

(4) random on-site inspections by the Commission's staff to ensure compliance with the public file requirement as well as other substantive requirements;[7] and

(5) ad hoc inspections by the Commission's staff to investigate charges of station misconduct or rule violations and to follow up on renewal applications that suggest possible licensee non-compliance with Commission rules.[8]

The Commission decided to substitute this five-element plan for the lengthy application forms it had previously required of all licensees[9] because much of the information obtained by the forms had proven to be unnecessary to the renewal task and had imposed a substantial paperwork burden on both the Commission and licensees.[10] It

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ments, and Program Log Requirements for Commercial Television Stations, 48 Fed. Reg. 37,239 (1983) (Notice of Proposed Rulemaking). No action has yet been taken. Presumably, if the Commission adopts some form of television deregulation, it will modify the public file requirements for television licensees accordingly.

[7] *Report and Order*, 49 Rad. Reg. 2d (P&F) at 752, ¶¶ 40-42.

[8] *Id.* at 752-53, ¶¶ 43-46.

[9] The old form for commercial television stations, for example, amounted to 21 pages, not including a number of appendices which stations were required to prepare. *Id.* at 742, ¶ 7.

[10] The Commission noted that the "renewal process . . . has consumed substantial Commission resources" not warranted by the results. *Id.* at 743, ¶ 11. Among other matters, the Commission elaborated on the adverse effect which the detailed applications had on Commission efforts in other areas:

> "The Commission currently devotes enormous energies and space to the renewal process during a time when we carry a significant backlog of applications for new facilities and major changes . . . . The Commission is faced with budget reductions and it is, therefore, incumbent upon us to pursue the most efficient uses of our staff . . . . We believe that adoption of the SRA will free up scarce resources for use in other areas." *Id.* at 747, ¶ 27.

determined that these problems could be avoided, and licensee compliance with the Commission's rules and policies achieved, through use of the revised, less burdensome renewal process. The Commission concluded that the new process provides adequate incentives for all broadcasters to comply with its rules because those subjected to the long application form and to on-site inspections are randomly selected.[11]

Finally, the Commission stressed that over the years public complaints have been the most important vehicle for bringing to its attention rule violations and inadequate station performance.[12] And it concluded that the information stations will be required to maintain in their public files will enable the public effectively to monitor station operations, particularly programming efforts.[13]

The D.C. Circuit upheld the Commission's new renewal process in a two-to-one decision (with Judge Wright dissenting). Writing for the court, Judge Bork stressed that the Communications Act expressly leaves the content of renewal application forms to the discretion of the Commission.[14] The court noted that the Commission had acknowledged its responsibility to determine, in the case

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[11] *Id.* at 750, ¶ 35.

[12] *Revision of Application for Renewal of License of Commercial and Noncommercial AM, FM and Television Licensees*, FCC No. 80-327 (July 11, 1980), at ¶ 6, *summarized* at 45 Fed. Reg. 47,444 (1980) (Notice of Proposed Rulemaking) (hereinafter cited as "*Notice*"). According to the Commission, the public has not hesitated to register complaints; for example, during the twelve-month period ending October 1981, the Commission received approximately 3,000 complaints each month concerning programming, not including organized write-in campaigns. Commission Brief at 22 n.25, *Black Citizens for a Fair Media v. FCC*, 719 F.2d 407 (D.C. Cir. 1983).

[13] *Report and Order*, 49 Rad. Reg. 2d (P&F) at 747, ¶ 26.

[14] *Black Citizens for a Fair Media v. FCC*, 719 F.2d at 412.

of each station, whether license renewal would be in the public interest.[16] The court reviewed the various sources of information upon which the new process relies—the SRA, the multiple audit procedures, and public input—and concluded that the Commission had made a reasonable determination that they will provide sufficient information to permit the Commission to make the requisite statutory findings.[16] Finally, the court determined that the Commission had provided a reasoned explanation for the new plan: "that the same degree of compliance [with the Commission's substantive requirements] could be achieved with the simplified renewal application," [17] which will "free up scarce resources for use in other areas." [18] With respect to petitioners' arguments, which were largely identical to those being made before this Court, Judge Bork observed:

> "In overlooking the Commission's conclusion that the new method could achieve equivalent compliance, petitioners reveal the true nature of their complaint; they believe the old system works better and wish to substitute their judgment for that of the Commission. When seen in that light, petitioners' argument must fail." [19]

On December 12, 1983, the D.C. Circuit denied a petition for rehearing and suggestion for rehearing *en banc*.[20] The present petition for a writ of certiorari followed.

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[15] *Id.* at 411.

[16] *Id.* at 413-14.

[17] *Id.* at 417.

[18] *Id.* (quoting *Report and Order*, 49 Rad. Reg. 2d (P&F) at 747, ¶ 27).

[19] *Id.* at 418 (footnote omitted).

[20] Four judges, including Judge Wright, would have granted rehearing *en banc*.

ARGUMENT

This case presents none of the traditional bases for grant of certiorari. The decision below is not in conflict with a decision of another circuit or of this Court. And the case presents no important or novel issues requiring this Court's attention. It involves only the Commission's well-established—and regularly exercised [21]—discretion to modify its application forms and methods of enforcing substantive rules. The Commission has not altered any "technical, programming or other substantive requirements" imposed on licensees.[22] Nor has it avoided its statutory obligation to renew a station license only if it determines that the "public interest, convenience, and necessity would be served thereby." [23]

The Commission has simply determined that it can better fulfill these responsibilities by obtaining pertinent information from all licensees; taking a hard, in-depth look at a randomly selected group of applicants; and relying upon public input as well as its own random inspections to bring to its attention possible violations of its rules and policies. This approach, the Commission has decided, is preferable to requiring all licensees to submit exten-

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[21] The Commission has modified its application forms on numerous occasions. *See, e.g., Revision of FCC Form 303, Application for Renewal of Broadcast Station License, and Certain Rules Relating Thereto*, 59 F.C.C.2d 750, 752, *modified*, 61 F.C.C.2d 27 (1976); *Formulation of Rules and Policies Relating to the Renewal of Broadcast Licensees*, 43 F.C.C.2d 1, *reconsideration denied*, 44 F.C.C. 2d 405 (1973); *Amendment of Section IV (Statement of Program Service) of Broadcast Application Forms 301, 303, 314, and 315*, 5 F.C.C.2d 175, 178 (1966). In its opinion in this proceeding, the Commission expressly left the door open for further revisions; it indicated that it may increase the percentage of licensees required to complete the audit form if that step proves warranted. *Report and Order*, 49 Rad. Reg. 2d (P&F) at 750, ¶ 34.

[22] *Report and Order*, 49 Rad. Reg. 2d (P&F) at 741, ¶ 4.

[23] 47 U.S.C.A. § 307(c) (West Supp. 1983).

sive materials, much of which the Commission had not in the past effectively reviewed.[24]

As the court below concluded, this decision by the Commission is fully consistent with the language of the Communications Act of 1934, as illuminated by its legislative history and as interpreted by this Court. By its terms, the Communications Act grants the Commission broad discretion to determine what information to solicit on renewal applications. Thus, while the Commission may renew a license only upon a finding that renewal will serve "the public interest, convenience, and necessity,"[25] the Act neither prescribes the factors the Commission must consider in making this finding nor establishes what information it must obtain. To the contrary, Section 308(b) explicitly leaves to the Commission the decision as to what information to require on renewal forms:

> All applications for station licenses, or modifications or renewals thereof, shall set forth *such facts as the Commission by regulation may prescribe* as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station . . . .[26]

The legislative history of amendments to the Act underscores the Commission's broad discretion to determine the information submitted on renewal applications. As originally enacted, the statute permitted the Commission to grant a station's renewal application only if it could make the same finding that it was required to make in

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[24] *See Report and Order*, 49 Rad. Reg. 2d (P&F) at 748, ¶ 11.

[25] 47 U.S.C.A. § 307(c) (West Supp. 1983).

[26] 47 U.S.C. § 308(b) (1976) (emphasis added). As the D.C. Circuit concluded in another case, Section 308(b) "leaves it within the discretion of the Commission to decide which facts relating to such factors it wishes to have set forth in applications." *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 645 (D.C. Cir.), *cert. denied*, 425 U.S. 992 (1976).

connection with an initial grant of a license.[27] The Commission therefore required applicants for initial license and for renewal to file forms requesting the same range of information. But in 1952 Congress eliminated the provision requiring renewal applicants to meet initial licensing criteria, specifically because it considered much of the information required of applicants for initial permits unnecessary at renewal time.[28] Since that time, Congress has taken several opportunities to make clear its desire that the license renewal process be made less burdensome.[29]

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[27] Section 307(d) of the Act originally provided in pertinent part:

> "Upon the expiration of any license, upon application therefor, a renewal of such license may be granted . . . but action of the Commission with reference to the granting of such application for the renewal of a license shall be limited to and governed by the same considerations and practice which affect the granting of original applications." Communications Act of 1934, ch. 652, § 307(d), 48 Stat. 1064, 1084.

[28] Communications Act Amendments, 1952, ch. 879, § 5(d), 66 Stat. 711, 714. Thus, the House Report to the 1952 amendment stated:

> "Section 307(d) as revised . . . provid[es] that the Commission shall not require an applicant for renewal to file any information which previously has been furnished to the Commission or which is not directly material to the consideration that affects the granting or denial of the application. Considerable dissatisfaction was expressed . . . with the burdensome requirements which applicants for renewal sometimes have been compelled to meet in the way of furnishing detailed information." H.R. Rep. No. 1750, 82d Cong., 2d Sess. 8, *reprinted in* 1952 U.S. Code Cong. & Ad. News 2234, 2242.

[29] Thus, Congress in 1981 extended the term of broadcast licenses from three years to five years for television stations and seven years for radio stations (Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 1241, 95 Stat. 357, 736, *amending* 47 U.S.C. § 307(d) (1976)), explaining that this step, *inter alia*, will "help to reduce costs to broadcasting and the Commission costs, while at the same time allowing the Commission to do a better job reviewing broad-

This Court has recognized the breadth of the Commission's discretion to define its own procedures. As Justice Frankfurter explained in *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134 (1940):

> "Necessarily, . . . questions of procedure in ascertaining the public interest, when the Commission's licensing authority is invoked . . . were explictly and by implication left to the Commission's own devising, so long, of course, as it observed the basic requirements designed for the protection of private as well as public interest." [30]

More than forty years later, this Court reiterated this principle. In *FCC v. WNCN Listeners Guild*, 450 U.S. 582 (1981), the Court reaffirmed that "the Commission's

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casters' performance." H.R. Rep. No. 208, 97th Cong., 1st Sess. 895, *reprinted in* 1981 U.S. Code Cong. & Ad. News 1010, 1257.

Moreover, in both 1974 and 1980 Congress passed legislation to curb the mounting paperwork burden associated with the administrative process. The 1974 enactment created a Commission on Federal Paperwork to study ways to minimize unnecessary information-gathering by government. Act of December 27, 1974, Pub. L. No. 93-556, 88 Stat. 1789. The 1980 legislation, which amended the Federal Reports Act and renamed it the Paperwork Reduction Act, Pub. L. No. 96-511, 94 Stat. 2812 (1980), required federal agencies to "make only necessary information requests of the public" and to eliminate "those burdens which are found to be unnecessary and thus wasteful." S. Rep. No. 930, 96th Cong., 2d Sess. 3, *reprinted in* 1980 U.S. Code Cong. & Ad. News 6241, 6243.

[30] 309 U.S. at 138. This Court has relied on the Commission's ability and traditional willingness, *see supra* note 21, to modify its procedures over time, as experience and circumstances dictate, as a basic reason for according the agency substantial judicial deference:

> "If time and changing circumstances reveal that the 'public interest' is not served by application of the Regulations, it must be assumed that the Commission will act in accordance with its statutory obligations." *National Broadcasting Co. v. United States*, 319 U.S. 190, 225 (1943), *quoted in FCC v. WNCN Listeners Guild*, 450 U.S. 582, 603 (1981).

judgment regarding how the public interest is best served is entitled to substantial judicial deference." [31]

In sum, the affirmance by the court below of the Commission's interpretation of its statutory duties raises no question warranting further review. Neither petitioners nor Judge Wright, in dissent below, dispute that the Commission enjoys broad discretion under the statute to revise its license renewal process.[32] But they both suggest that licensees seeking renewal must run on their past programming record, and they contend that this particular revision will leave the Commission with insufficient data about each licensee's programming to make the requisite public interest finding prior to grant of renewal.[33] The Commission has not receded from the view that licensees with inadequate or deficient records, in the programming area or otherwise, should not be entitled to license renewal. Based on its administrative experience

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[31] 450 U.S. at 596 (citation omitted). In discussing one of its prior decisions, the Court underscored this point:

> "Although it was declared in *National Broadcasting Co. v. United States* [319 U.S. 190 (1943)] that the goal of the Act is 'to secure the maximum benefits of radio to all the people of the United States,' . . . it was also emphasized that Congress had granted the Commission broad discretion in determining how that goal could best be achieved. The Court accordingly declined to substitute its own views on the best method of encouraging effective use of the radio for the views of the Commission." 450 U.S. at 593-94 (citations omitted).

[32] Indeed, Judge Wright acknowledged that "nothing on the face of the Act explicitly requires that programming inquiries be included on all applications for renewal." *Black Citizens for a Fair Media v. FCC*, 719 F.2d at 430 (Wright, J., dissenting).

[33] *See* Petition for Certiorari at 16-17; *Black Citizens for a Fair Media v. FCC*, 719 F.2d at 433-35 (Wright, J., dissenting). Judge Wright's dissent makes clear his view that the Commission must review each particular licensee's past programming record before granting renewal and cannot rely upon the other means outlined in its order to ensure that licensees are operating in the public interest. *See, e.g.*, 719 F.2d at 435.

and an extensive record,[34] the Commission has concluded that the variety of enforcement and monitoring techniques it has created will still require all licensees to maintain a sound operating record warranting renewal and that it is unnecessary to require each to file extensive information in the application form.

This Court has made clear that such an agency decision, grounded in judgmental or predictive conclusions, is entitled to substantial judicial deference,[35] and nothing in this record suggests that the decision falls outside the bounds of deference to which the Commission is entitled. The Commission has processed thousands of renewal applications and must be presumed to know best what information it needs and what enforcement methods have proven to be successful.[36] As the court below recognized, what petitioners sought below—and what they seek here—is the substitution of a court's judgment for that of the agency on matters of the very kind which this Court has stated must be left to agency discretion and expertise.[37]

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[34] Over one hundred parties filed comments in this proceeding. *Black Citizens for a Fair Media v. FCC*, 719 F.2d at 421 (Wright, J., dissenting).

[35] *FCC v. WNCN Listeners Guild*, 450 U.S. at 595-96; *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 813-14 (1978); *FPC v. Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 29 (1961).

[36] As the court below stated:

> "the Communications Act gives the FCC 'substantial discretion to reconsider and review the appropriateness of [its] regulations including the continued need for particular information in connection with renewal applications.' . . . Moreover, the FCC has worked with renewal applications for many years and has developed considerable expertise and experience." *Black Citizens for a Fair Media v. FCC*, 719 F.2d at 418 (footnotes and citations omitted).

[37] Judge Wright's dissent is also an argument for substitution of judicial judgment for agency judgment.

Compare Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 543 (1978) ("admin-

Contrary to petitioners' contentions, the Commission's revised renewal process is consistent with traditional Commission enforcement techniques. The Commission has never relied exclusively, or even primarily, on the renewal application to monitor licensee compliance with such long-standing requirements as the fairness doctrine, equal opportunity for opposing candidates, and sponsorship identification. Instead, the Commission has investigated a licensee's performance in these areas only upon complaint or when it has had other reason to suspect non-compliance.[38] The Commission has also historically relied on random inspections,[39] and has used random sampling techniques,[40] to monitor licensee programming performance. And the Commission has traditionally considered public monitoring a significant element of its

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istrative agencies 'should be free to fashion their own rules of procedures and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties' ") (quoting *FCC v. Schreiber*, 381 U.S. 279, 290 (1965) and *FCC v. Pottsville Broadcasting Co.*, 309 U.S. at 143).

[38] *See, e.g., National Citizens Committee for Broadcasting v. FCC*, 567 F.2d 1095, 1116 (D.C. Cir. 1977), *cert. denied*, 436 U.S. 926 (1978) (upholding Commission decision to police the fairness doctrine on an ad hoc basis, rather than review licensee compliance at renewal time).

[39] For example, the Commission's Field Operations Bureau has for years conducted random inspections to ensure licensee compliance with technical requirements. *See* 47 C.F.R. §§ 0.111, 73.1225-26 (1983).

[40] Thus instead of requiring a television licensee at renewal time to submit statistical data on all of its programming in the license period, the Commission randomly selected seven days to comprise a typical week, for which the licensee was required to compile its programming information. This procedure was intended to have the effect inherent in any random enforcement device, including those adopted in the present proceeding—a licensee, not knowing in advance the dates for the composite week, complied with programming requirements generally so as to avoid having deviations reflected in the data.

enforcement scheme.[41] These enforcement techniques—random audits and public monitoring—are precisely the ones adopted by the Commission in this proceeding and upon which it will rely.

These methods will provide the Commission with a wide array of information at renewal time. The SRA will provide data on each licensee's character and legal qualifications as well as its other broadcast and media interests. The public file requirement will ensure that the Commission—and the public[42]—will have access to significant information about each licensee's programming, including lists of its broadcasts responsive to community needs. The Commission will also have on file each television licensee's current promises as to the minimum amounts of news, public affairs, and other nonentertainment programming it will broadcast.[43] All tele-

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[41] *See Notice* ¶ 6, *summarized at* 45 Fed. Reg. 47,444 (1980).

[42] Although petitioners, as well as Judge Wright, fault the Commission for relying in part on the public to call attention to shortcomings in the performance of licensees, Congress, in extending the license term for television and radio stations, recently recognized the significance of public input:

> "[T]he most serious station deficiencies are generally brought to the Commission's attention through complaints filed during the license term. Since this complaint process will continue, the public will have ample opportunity to bring such matters promptly to the Commission's attention. Thus, an extension of the license term will not lessen the Commission's oversight and enforcement powers necessary to protect the public." H.R. Rep. No. 208, 97th Cong., 1st Sess. 896, *reprinted in* 1981 U.S. Code Cong. & Ad. News 1010, 1258.

[43] By virtue of this requirement, the Commission will be able to evaluate television licensee undertakings in substantially the same manner as it had under the previous system—in accordance with the processing guidelines set out in its rules. If a television licensee's revised promises fall below the guidelines, the staff must forward the renewal application to the full Commission for review. If, on the other hand, a licensee's promises continue to exceed the Commission's guidelines, and the rest of the application raises no questions, the application may be granted. In either case, the Com-

vision stations are obligated to report any substantial deviations in these promises,[44] and misrepresentations can result in a loss of license.[45] Finally, the random audit form as well as public input will provide the Commission with further pertinent information and will strengthen the incentives for licensee compliance with Commission rules.

To be sure, the Commission will not have before it, with respect to every renewal application, detailed information regarding the licensee's programming efforts during the license term. But, as the court below concluded, the statute does not prohibit the Commission in individual cases from presuming that renewal is justified, if the variety of enforcement techniques and public monitoring opportunities it has put in place have not produced any indication that a station has violated the rules or is otherwise operating in a fashion that is inconsistent with the public interest.[46]

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mission's treatment of the television licensee's promises will be no different from what it was in the past.

[44] *See Report and Order*, 49 Rad. Reg. 2d (P&F) at 757, ¶ 64; *Reconsideration Order*, 87 F.C.C.2d at 1129.

[45] *See, e.g., FCC v. WOKO, Inc.*, 329 U.S. 223, 227-28 (1946).

[46] *Black Citizens for a Fair Media v. FCC*, 719 F.2d at 416. As with other aspects of the revised renewal process, this presumption is consistent with traditional Commission practice. The Commission has always "relied to the maximum extent on the good faith efforts and discretion of licensees in carrying out their obligations." *Deregulation of Radio*, 84 F.C.C.2d at 971.

Nor does petitioners' displeasure with the Commission's deregulation of radio, *see* Petition For Certiorari at 17-18, provide a basis for granting certiorari in this case. The D.C. Circuit largely upheld the revisions adopted by the Commission in its separate radio deregulation proceeding. *Office of Communication of United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983). No review of that decision by this Court was sought.

Petitioners have not demonstrated that the information which radio licensees must maintain in their public files will provide the

Finally, petitioners' argument that the Commission failed to engage in reasoned decision-making gives rise to no question requiring this Court's attention. As Judge Bork noted, "[t]his is not a case where an agency altered course without acknowledging or recognizing the change. . . . Nor is this a case where the agency has failed to provide a reasoned explanation for its change in policy."[47] Instead, the Commission explained in detail its view that the revised renewal process should afford it sufficient information to make the public interest determination, at a substantial saving of cost and resources. The Commission carefully reviewed the numerous comments filed both in support and opposition to the proposed renewal process. While petitioners may disagree with the Commission's ultimate conclusion, their disagreement does not render its decision arbitrary or require this Court's review.

Commission and public with insufficient data to monitor licensee compliance with the Commission's substantive policies. And they certainly have not explained why the Commission's decisions in the radio deregulation proceeding should cause this Court to grant certiorari in a separate case concerning renewal application forms for all licensees.

[47] *Black Citizens for a Fair Media v. FCC*, 719 F.2d at 417. In this respect, this case is substantially different from *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*, 103 S. Ct. 2856 (1983), upon which petitioners rely. In that case, this Court found the rescission of a regulation by the National Highway Traffic Safety Administration to be arbitrary and capricious, primarily because the agency had not considered an obvious alternative to rescission. 103 S. Ct. at 2868-69. Here, by contrast, petitioners do not claim that the Commission ignored any alternatives to the renewal system it adopted or any of the arguments they presented.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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May 18, 1984